

[Service Date October 1, 2008]

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

VERIZON SELECT SERVICES, INC.;	)	
MCIMETRO ACCESS	)	DOCKET UT-081393
TRANSMISSION SERVICES, LLC;	)	
MCI COMMUNICATIONS	)	ORDER 01
SERVICES, INC.; TELECONNECT	)	
LONG DISTANCE SERVICES AND	)	
SYSTEMS CO. d/b/a TELECOM	)	PREHEARING CONFERENCE
USA; AND TTI NATIONAL, INC.,	)	ORDER
	)	
Complainants,	)	
	)	
v.	)	
	)	
UNITED TELEPHONE COMPANY	)	
OF THE NORTHWEST, d/b/a	)	
EMBARQ	)	
	)	
Respondent.	)	
.....	)	

1 **NATURE OF PROCEEDING.** Docket UT-081393 involves a formal complaint against United Telephone Company of the Northwest (Embarq) filed by Verizon Select Services, Inc., MCI metro Access Transmission Services, LLC, MCI Communications Services, Inc., Teleconnect Long Distance Services and Systems Co. d/b/a Telecom USA and TTI National, Inc. (collectively “Verizon Access” or “Complainants”) with the Washington Utilities and Transportation Commission (Commission) on July 28, 2008. Embarq filed its answer to the complaint on August 18, 2008 and simultaneously filed a motion to dismiss.

2 In its complaint, Verizon Access alleges that Embarq imposes intrastate switched access fees in Washington that are unjust and unreasonable, in violation of Revised Code of Washington (RCW) 80.36.140. Verizon Access also alleges that the current level of Embarq’s intrastate switched access fees subject Embarq’s competitors to a “competitive disadvantage” and create “undue or unreasonable prejudice” in violation of RCW 80.36.186. Verizon Access requests that the Commission reduce Embarq’s intrastate switched access fees and align them with those of one of the other

incumbent local exchange carriers (ILECs) in the state, Verizon Northwest, Inc., or Qwest Corporation.

3 **CONFERENCE.** The Commission convened a prehearing conference in this docket at Olympia, Washington on Wednesday, September 24, 2008. The matter was heard before Administrative Law Judges Adam E. Torem and Ann E. Rendahl.

4 **APPEARANCES.** Gregory M. Romano, General Counsel – Northwest Region, Everett, Washington, and Christopher D. Oatway, Assistant General Counsel, Arlington, Virginia, represent the complainants, Verizon Access. William E. Hendricks, III, Hood River, Oregon, represents the respondent, Embarq. Jonathan Thompson, Assistant Attorney General, Olympia, Washington, represents Commission Staff.<sup>1</sup> Letty S.D. Friesen, General Attorney, Denver, Colorado, and Cindy Manheim, Redmond, Washington, represent AT&T Communications of the Pacific Northwest, Inc., and TCG Seattle (AT&T). Contact information provided at the conference for the parties' representatives is attached as Appendix A to this Order.

5 **PETITIONS FOR INTERVENTION.** AT&T filed a petition to intervene on September 19, 2008, and appeared at the conference. No other parties sought intervention. Neither Verizon Access nor Embarq objected to AT&T's petition to intervene. Therefore, AT&T's petition was granted pursuant to RCW 34.05.443 and WAC 480-07-355(3).

6 **MOTION TO DISMISS.** On August 18, 2008, Embarq filed a motion to dismiss the complaint, without prejudice, or alternatively hold the complaint in abeyance pending future action by the Federal Communications Commission (FCC). On August 27, 2008, Verizon Access filed its opposition to Embarq's motion.

7 Following discussion at the conference, the presiding administrative law judge deferred ruling on Embarq's motion to dismiss, pending a decision by the FCC expected on or before November 5, 2008. The FCC's decision is required under a

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<sup>1</sup> In formal proceedings, such as this, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as other parties to the proceeding. There is an "ex parte wall" separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners' policy and accounting advisors from all parties, including regulatory staff. RCW 34.05.455.

Writ of Mandamus entered by the United States Court of Appeals for the D.C. Circuit, directing the FCC to “explain the legal basis for its ISP-bound compensation rules” established in its *ISP Remand Order* by that date.<sup>2</sup> In addition to addressing its order on compensation for ISP-bound traffic, the FCC may also address a number of pending proposals to broadly reform the current system of intercarrier compensation. Given that the FCC’s expected action may require additional briefing by the parties in this proceeding, the presiding officer deferred ruling on Embarq’s motion to dismiss. A second prehearing conference will be needed to schedule briefing that the Commission is likely to require from the parties on the FCC’s expected decision..

8 **AMICUS CURIAE BRIEF.** On August 27, 2008, the Washington Independent Telecommunications Association (WITA) filed a motion seeking permission to file an *amicus* brief in support of Embarq’s motion to dismiss. Applying the standards for determining whether to grant WITA’s motion, the presiding officer relied on Rules of Appellate Procedure (RAP) Rule 10.6, noting that Verizon Access did not consent to the filing of WITA’s *amicus* brief.<sup>3</sup> Further, having stayed a decision on Embarq’s motion to dismiss, the presiding officer determined that WITA’s *amicus* brief would not assist the Commission at this point in the case. Therefore, the presiding officer denied WITA’s motion to file an *amicus* brief, without prejudice to WITA seeking to file a subsequent *amicus curiae* brief or participate in the proceeding.<sup>4</sup> The presiding officer did not consider WITA’s policy arguments in determining the disposition of Embarq’s motion to dismiss.

9 **PROCEDURAL SCHEDULE.** The presiding officer also deferred establishing a procedural schedule in this matter, pending the expected FCC decision.

10 **DISCOVERY.** Verizon Access sought to invoke the Commission’s discovery rule, WAC 480-07-400(2)(b). In light of the above-noted deferral regarding establishment of a procedural schedule and the interests of conserving the resources of all parties until the FCC issues its ruling, the presiding officer denied this request.

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<sup>2</sup> See *In re Core Communications, Inc.*, 531 F.3d 849, 850 (C.A.D.C. 2008).

<sup>3</sup> Verizon Access filed its response to WITA’s *amicus* brief on September 2, 2008.

<sup>4</sup> The presiding officer indicated that the Commission may entertain other *amicus curiae* briefs at a later date in this proceeding.

- 11 **PROTECTIVE ORDER.** The Commission will consider the need for a protective order at the next prehearing conference.
- 12 **NOTICE OF SECOND PREHEARING CONFERENCE.** The Commission schedules a second prehearing conference in this matter, to commence on **Wednesday, November 19, 2008, at 1:30 p.m., in Room 206 of the Commission's headquarters, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.** Parties wishing to attend telephonically may call the Commission's teleconference bridge line at (360) 664-3846.
- 13 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file with the Commission an original plus **ten (10)** copies of all pleadings, motions, briefs, and other prefiled materials. These materials must conform to the format and publication guidelines set forth in WAC 480-07-395 and 480-07-460, and must be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.
- 14 All filings must be mailed or delivered to the Commission's Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.
- 15 An electronic copy of all filings must be provided through the Commission's Web Portal ([www.utc.wa.gov/e-filing](http://www.utc.wa.gov/e-filing)) or by e-mail delivery to [records@utc.wa.gov](mailto:records@utc.wa.gov). Alternatively, Parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette or CD including the filed document(s). Parties must furnish electronic copies in MS Word 6.0 (or later) supplemented by a separate file in .pdf (Adobe Acrobat) format. Parties must follow WAC 480-07-140(5) in organizing and identifying electronic files. **Electronic documents that are redacted versions that mask confidential information, should be filed exclusively in "read only" .pdf format.**
- 16 **ELECTRONIC SUBMISSION OF DOCUMENTS.** Electronic submission of documents to the Commission on the filing deadline is permitted to expedite the

filing process, so long as the Commission physically receives the original and required number of copies by 12:00 noon on the first business day following the filing deadline established in the procedural schedule. *WAC 480-07-145(6)*. In this matter, parties must submit documents through the Commission's Web Portal ([www.utc.wa.gov/e-filing](http://www.utc.wa.gov/e-filing)) or by e-mail to [records@utc.wa.gov](mailto:records@utc.wa.gov), and file an original, plus **ten (10)** paper copies, of the documents with the Commission by the following business day. Finally, to perfect filing, parties must simultaneously provide e-mail courtesy copies of filings to the presiding administrative law judges and advisory staff identified on Appendix A to this Order as well as to the parties to the proceeding.

- 17 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission does have limited ability to provide dispute resolution services; if you wish to explore those services, please call the Director, Administrative Law Division, at 360-664-1144.
- 18 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective October 1, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM  
Administrative Law Judge

<b>APPENDIX A</b>				
<b>PARTIES' REPRESENTATIVES DOCKET UT-081393</b>				
<b>PARTY</b>	<b>REPRESENTATIVE</b>	<b>PHONE</b>	<b>FACSIMILE</b>	<b>E-MAIL</b>
<b>Verizon Access</b>	<b>Gregory M. Romano</b> General Counsel – Northwest Region Verizon 1800 41 <sup>st</sup> Street; WA0105GC Everett, WA 98201	425-261-5460	425-261-5262	<a href="mailto:Gregory.m.romano@verizon.com">Gregory.m.romano@ verizon.com</a>
	<b>Christopher D. Oatway</b> 1515 N. Courthouse Road, Suite 500 Arlington, VA 22201	703-351-3037	703-351-3676	<a href="mailto:Christopher.d.oatway@verizon.com">Christopher.d.oatway@ verizon.com</a>
<b>Embarq</b>	<b>William E. Hendricks, III</b> United Telephone Company of the Northwest d/b/a Embarq 902 Wasco Street Hood River, OR 97031	541-387-9439	541-586-5522	<a href="mailto:Tre.hendricks@Embarq.com">Tre.hendricks@Embarq.com</a>
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	<b>Cindy Manheim</b> AT&T 8645 154 <sup>th</sup> Avenue NE Redmond, WA 98052  P.O. Box 97061 Redmond, WA 98073	425-580-8112	425-580-8333	<a href="mailto:cindy.manheim@att.com">cindy.manheim@att.com</a>

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
<b>Commission Staff</b>	<b>Jonathan Thompson</b> Assistant Attorney General 1400 S. Evergreen Park Drive S.W. Olympia, WA 98504-0128	360-664-1225	360-586-5522	<a href="mailto:jthomps@utc.wa.gov">jthomps@utc.wa.gov</a>
<b>Presiding Admin. Law Judges</b>	<b>Adam E. Torem</b>  <b>Ann E. Rendahl</b>  1300 S. Evergreen Park Drive SW P.O. Box 47250 Olympia, WA 98504-7250	360-664-1138  360-664-1144	360-664-2654  [ALD fax only – do not use to file]	<a href="mailto:atorem@utc.wa.gov">atorem@utc.wa.gov</a>  <a href="mailto:arendahl@utc.wa.gov">arendahl@utc.wa.gov</a>
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